Douglas Scott, a sole proprietor d/b/a Centaur Electric a/k/a Centaur Electric Incorporated *and* Local 58, International Brotherhood of Electrical Workers, AFL–CIO. Case 7–CA–31512

August 9, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

Upon a charge filed by the Union on February 11, 1991, the General Counsel of the National Labor Relations Board issued a complaint on March 28, 1991, against Centaur Electric, the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent has failed to file an answer.

On May 20, 1991, the General Counsel filed a Motion for Default Judgment (Motion for Summary Judgment). On May 23, 1991, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, ''all the allegations in the Complaint shall be deemed to be admitted true and may be so found by the Board.'' Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Regional attorney, by letter dated April 19, 1991, notified the Respondent that unless an answer was received by May 3, 1991, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a sole proprietorship,[1] engages in the nonretail building and construction industry at its facility in Warren, Michigan. On June 27, 1979, the Respondent signed a Letter of Assent authorizing Southeastern Michigan Chapter, NECA, Inc. (NECA) as its collective-bargaining representative for all matters contained in or pertaining to the current labor agreement between NECA and the Union, which current agreement is effective by its terms from June 7, 1989, to June 7, 1992. The Respondent thereby indicated an intent to engage in group bargaining. The employers who are members of or who have authorized NECA to be their bargaining agent annually purchase goods and materials valued in excess of $50,000 from points located outside the State of Michigan and cause the goods to be shipped to their Michigan locations. We find that the Respondent is, by virtue of its association with NECA, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

Since 1979, the Respondent has not terminated its authorization to NECA to act as its collective-bargaining representative. The Union, by virtue of Section 8(f) of the Act, is the limited exclusive collective-bargaining representative of the Respondent's employees in the following unit of employees, which unit is appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time employees employed as electricians within the jurisdiction of the Union employed by the Respondent out of its Warren place of business, but excluding office clerical employees, guards and supervisors as defined in the Act.

The Respondent has recognized the Union as the exclusive bargaining representative of its employees in the above-described unit and such recognition has been embodied in a series of collective-bargaining agreements, the most recent of which is by its terms effective from June 7, 1989, until June 7, 1992.

A. *Unilateral Modifications in the Current Collective-Bargaining Agreement*

The collective-bargaining agreement described above provided, inter alia, for the payment of certain wages to unit employees; remittance to the Union of all union dues and fees properly deducted from the pay of unit employees; the filing of certain compliance certificate insurance reports; and the making of National Electrical Benefit Fund contributions, Electrical Workers' Insurance Fund contributions, Vacation Fund contributions, Supplemental Pension Plan contributions, Supplemental Unemployment Benefit Plan contributions, Electrical Training Trust Fund contributions, and An-

[1] Prior to May 15, 1986, the Respondent was a Michigan corporation. On May 15, 1986, the Respondent was dissolved as a corporate entity by operation of law for failure to file annual reports and has since continued to operate as a sole proprietorship doing business as Centaur Electric.

nuity Fund contributions on behalf of unit employees, all of which constitute mandatory subjects of bargaining.

Since August 11, 1990, the Respondent, without prior notice to and/or bargaining with the Union, has failed to make the payments, contributions, and reports required under the collective-bargaining agreement.[2]

We find that the Respondent's conduct constitutes a unilateral modification of the collective-bargaining agreement without complying with the provisions of Section 8(d) of the Act. We conclude that the Respondent, therefore, refused to bargain collectively with the representative of its employees in violation of Section 8(a)(5) and (1) of the Act.

B. *The Request for Information*

By letter dated January 14, 1991, the Union requested certain information from the Respondent. In its letter, the Union stated that it is investigating the extent to which union companies are operating nonunion in violation of the collective-bargaining agreement. It further stated that its records showed that the Respondent had not paid fringe benefits for its employees since December 1, 1989, and that the Union was, therefore, unable to determine if the Respondent's employees were receiving the proper wage and fringe benefits in accordance with the collective-bargaining agreement. The letter ended with a request for the Respondent to respond to an enclosed questionnaire concerning these issues.

The information requested in the Union's January 14, 1991 letter is necessary for, and relevant to, the Union's performance of its function as the exclusive collective-bargaining representative of the employees in the appropriate unit. Since January 14, 1991, the Respondent has failed and refused to furnish the information requested by the Union in its letter of January 14, 1991.

We find that the Respondent's conduct constitutes an unlawful refusal to bargain collectively with the representative of its employees in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSIONS OF LAW

1. By unilaterally and without notice to or bargaining with the Union ceasing to pay certain wages to employees; to remit to the Union all union dues and fees properly deducted from unit employees' pay; to file certain compliance certificate insurance reports, and to make National Electrical Benefit Fund contributions, Electrical Workers' Insurance Fund contributions, Vacation Fund contributions, Supplemental Pension Plan contributions, Supplemental Unemployment Benefit Plan contributions, Electrical Training Trust Fund contributions, and Annuity Fund contributions, all as provided in the collective-bargaining agreement, the Respondent has unilaterally modified the collective-bargaining agreement within the meaning of Section 8(d) of the Act and thereby has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

2. By refusing during the term of its collective-bargaining agreement with the Union, to furnish the Union with information that is necessary and relevant to its role as the exclusive collective-bargaining representative of the employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent having unlawfully modified the collective-bargaining agreement effective from June 7, 1989, to June 7, 1992, we shall order the Respondent to implement and adhere to those provisions of the agreement with which it failed to comply. We shall order the Respondent to make whole all employees in the unit for any loss of earnings resulting from the Respondent's misconduct as prescribed in *Ogle Protection Service*, 183 NLRB 682 (1970), with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). Additional amounts shall be paid into employee benefit funds as provided in *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979). We also shall order the Respondent to make all employees whole for any loss of pension plan credits or benefits, and for any medical expenses incurred, resulting from the Respondent's failure to implement the terms of the agreement. *Kraft Plumbing & Heating*, 252 NLRB 891 (1980). We shall further order the Respondent to remit to the Union all the union dues and fees owed for those unit employees who had authorized the Respondent to deduct and remit them to the Union pursuant to the parties' collective-bargaining agreement, with interest as computed under *New Horizons for the Retarded*, supra.

The Respondent having unlawfully refused to furnish certain information requested by the Union, we will order the Respondent to provide, on request, the

[2] The complaint also alleges an unlawful failure to make contributions to the National Electrical Industry Fund. The complaint gives no further information concerning this fund. On its face, the National Electric Industry Fund appears to be an industry advancement fund, and in the absence of evidence to the contrary, we shall consider it as such. The Board has held that an industry advancement fund is not a mandatory subject of bargaining. *Scott Lee Guttering Co.*, 295 NLRB 497 fn. 3 (1989). The Respondent's failure to make the contributions, therefore, does not violate Sec. 8(a)(5) of the Act. Thus, the Respondent is not required by our Order to make contributions to this fund.

information requested in the Union's letter of January 14, 1991.

ORDER

The National Labor Relations Board orders that the Respondent, Douglas Scott, a sole proprietor d/b/a Centaur Electric a/k/a Centaur Electric Incorporated, Warren, Michigan, his agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to abide by and adhere to its collective-bargaining agreement with Local 58, International Brotherhood of Electrical Workers, AFL–CIO by unilaterally failing to pay certain wages to unit employees, to remit all union dues and fees properly deducted from unit employees' pay, to file insurance reports, and to make contributions to the Union's fringe benefit funds, as provided for in the collective-bargaining agreement.

(b) Refusing, during the term of the collective-bargaining agreement with the Union, to furnish the Union, on request, information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Abide by and adhere to its collective-bargaining agreement with the Union, by paying certain wages to unit employees, remitting all union dues and fees properly deducted from unit employees' pay, filing insurance reports, and making contributions to the Union's fringe benefit funds. The appropriate unit is:

> All full-time and regular part-time employees employed as electricians within the jurisdiction of the Union employed by the Respondent out of its Warren place of business, but excluding office clerical employees, guards and supervisors as defined in the Act.

(b) Make unit employees whole for any losses they may have suffered as a result of the Respondent's failure to abide by the collective-bargaining agreement which expires on June 7, 1992, as prescribed in the remedy section of the Decision and Order.

(c) Remit to the Union all the union dues and fees properly deducted from the pay of unit employees.

(d) On request, furnish the Union with the information sought by the Union in its letter of January 14, 1991, as well as any other information requested that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

(e) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(f) Post at its facility in Warren, Michigan, copies of the attached notice marked ''Appendix.''[3] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(g) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that I violated the National Labor Relations Act and has ordered me to post and abide by this notice.

I WILL NOT refuse to abide by and adhere to our collective-bargaining agreement with Local 58, International Brotherhood of Electrical Workers, AFL–CIO by unilaterally failing to pay certain wages to unit employees, to remit all union dues and fees properly deducted from unit employees' pay, to file insurance reports, and to make contributions to the Union's fringe benefit funds, as provided for in the collective-bargaining agreement.

I WILL NOT refuse to furnish the Union, on request, information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

I WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

I WILL abide by and adhere to our collective-bargaining agreement with the Union by paying certain wages to unit employees, remitting all union dues and fees properly deducted from unit employees' pay, filing insurance reports, and making contributions to the Union's fringe benefit funds. The appropriate unit is:

> All full-time and regular part-time employees employed as electricians within the jurisdiction of

the Union employed by Centaur Electric, Inc., out of its Warren place of business, but excluding office clerical employees, guards and supervisors as defined in the Act.

I WILL make unit employees whole for losses they may have suffered from our failure to abide by the collective-bargaining agreement which expires on June 7, 1992.

I WILL remit to the Union all union dues and fees properly deducted from unit employees' pay.

I WILL, on request, furnish the Union with the information sought by the Union in its letter to us dated January 14, 1991, as well as any other information requested that is relevant and necessary to its role as the exlcusive bargaining representative of the unit employees.

DOUGLAS SCOTT, A SOLE PROPRIETOR D/B/A CENTAUR ELECTRIC A/K/A CENTAUR ELECTRIC INCORPORATED